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No. 91-1813

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

R. Ernest COHN, D.C., D.A.B.C.O.,
Petitioner,

v.

John L. BOND, M.D., *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents respectfully submit that the petition for a writ of certiorari (filed with this Court on May 11, 1992 and received by respondents on May 14, 1992) be denied.

STATUTORY PROVISIONS AT ISSUE

The following statutory provisions not identified by petitioner as being at issue in this case must be interpreted and construed in order to reach the merits of petitioner's questions presented:

N.C. Gen. Stat. § 131E-5(a) and (b) (1991):

> § 131E-5. Title and purpose.
>
> (a) This Part shall be known and may be cited as the "Municipal Hospital Act."
>
> (b) The purpose of this Part is to authorize municipalities to construct, operate and maintain hospitals and other facilities which furnish hospital, clinical and similar services to the people of this State. It is also the purpose of this Part to authorize municipalities to cooperate with other public and private agencies and with each other. Additionally, it is the purpose of this Part to authorize municipalities to accept assistance from State and federal agencies and from other sources.

N.C. Gen. Stat. § 131E-7(a)(1) (1991):

> § 131E-7. General powers.
>
> (a) A municipality shall have all the powers necessary or convenient to carry out the

purposes of this Part, including the following powers, which are in addition to the powers granted elsewhere in this Part:

(1) To construct, equip, operate, and maintain hospital facilities;

N.C. Gen. Stat. § 131E-85(a) and (b) (1991):

§ 131E-85. Hospital privileges and procedures.

(a) The granting or denial of privileges to practice in hospitals to physicians licensed under Chapter 90 of the General Statutes, Article 1, dentists and podiatrists and the scope and delineation of such privileges shall be determined by the governing body of the hospital on a non-discriminatory basis. Such determinations shall be based upon the applicant's education, training, experience, demonstrated competence and ability, and judgment and character of the applicant, and the reasonable objectives and regulations of the hospital, including, but not limited to appropriate utilization of hospital facilities, in which privileges are sought. Nothing in this Part shall be deemed to mandate hospitals to grant or deny to any such individuals or others privileges to practice in hospitals, or to offer or provide any type of care.

(b) The procedures to be followed by a licensed hospital in considering applications of dentists and podiatrists for privileges to practice in such hospitals shall be similar to those applicable to applications of physicians licensed under Chapter 90 of the General Statutes, Article 1. Such procedures shall be available upon request.

N.C. Gen. Stat. § 131E-86 (1991):

§ 131E-86. Limited privileges.

(a) It shall be unlawful for an individual who is not licensed under Chapter 90 of the General Statutes, Article 1 [practice of medicine and surgery], to admit a patient to a hospital without written proof in accordance with the policy of the governing body of the hospital that a physician licensed under Chapter 90 of the General Statutes, Article 1, who is a member of the medical staff will be responsible for the performance of a basic medical appraisal and for the medical needs of the patient. The governing body of a hospital may waive this requirement for a dentist licensed under Chapter 90 of the General Statutes, Article 2, to the extent authorized by this statute, who has successfully completed a postgraduate program in oral and

maxillofacial surgery accredited by the American Dental Association.

(b) The governing body of each hospital shall not grant privileges that exceed the scope of a license.

N.C. Gen. Stat. § 90-153 (1991) [Chapter 90, Article 8]:

§ 90-153. Licensed chiropractors may practice in public hospitals.

A licensed chiropractor in this State may have access to and practice chiropractic in any hospital or sanitarium in this State that receives aid or support from the public, and shall have access to diagnostic X-ray records and laboratory records relating to the chiropractor's patient.

N.C. Gen. Stat. § 90-157.1 (1991):

§ 90-157.1. Free choice by patient guaranteed.

No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose a duly licensed

chiropractor as the provider of care or services which are within the scope of practice of the profession of chiropractic as defined in this Chapter.

STATEMENT OF THE CASE

Petitioner, chiropractor R. Ernest Cohn, seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit, December 31, 1991, affirming an order of the United States District Court for the Western District of North Carolina granting summary judgment for defendants.

Petitioner's complaint charged that the denial of his application for hospital privileges at the Wilkes General Hospital, a municipal hospital in Wilkesboro, North Carolina, violated the federal antitrust laws.[1] The Fourth Circuit affirmed the District Court's ruling that the denial was immune from federal antitrust scrutiny under the Local Governments Antitrust Act of 1984, 15 U.S.C. § 84 *et seq.* (1985) ("LGAA") and the State Action doctrine. Petitioner now seeks a writ of certiorari to review that decision on the basis that it creates a conflict with rulings of other circuits.

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[1] Petitioner also alleged related state law claims which are not at issue here.

The relevant facts may be summarized as follows.[2]

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[2] Petitioner's Statement of the Case contains numerous inaccuracies. For example, Petitioner purports to dispute the hospital medical staff committee members' reasons for recommending that petitioner's hospital privileges application be denied, but in so doing, lists the reasons of the hospital Board of Trustees which considered a wide variety of factors in addition to the recommendation of the medical staff committees in making its decision to deny petitioner's privileges. (Pet. 6 n.5) Similarly, petitioner continually misrepresents that the individual physician medical staff committee members who are the respondents in this case are virtually all in "substantial, direct economic" competition with chiropractors and petitioner. (*See* Pet. i, 3, 5, 12, 18, 22) To the contrary, the respondents are physicians who practice in a variety of specialties -- the typical array of medical specialties found in a small town. The practices of these physicians no doubt vary in the extent to which they include patients who might also be treated by a chiropractor. However, at least some of the individuals, for example, Dr. Oliver, an ophthalmologist, no doubt have *no* competitive relationship with petitioner. A third example of inaccuracy in the petition is petitioner's repeated statement that the hospital made a *blanket* denial of privilege to *all* chiropractors, which it did not do. (Pet. 6, 21, 24) The medical staff committees and hospital Board of Trustees had before them, and made a decision concerning, petitioner's *individual* application. While consideration of that application necessarily involved general questions concerning chiropractors on medical staffs, the decision involved evaluation of petitioner and his potential service on the staff. There is evidence that many of the individuals considering

In 1984, petitioner applied for hospital privileges at the Wilkes General Hospital, a small, municipally owned and operated hospital in the city of Wilkesboro, North Carolina. In accordance with the hospital's by-laws, the application was referred first to the Medical Staff Credentials Committee, which recommended that the application be denied. The Committee stated that the privileges petitioner requested were not permitted under North Carolina law. The Committee further expressed concern that medical doctors would not be able to supervise chiropractic care at the hospital. Petitioner appealed the Credentials Committee recommendation to the Medical Executive Committee. The Executive Committee then considered the application "from the standpoint of whether or not it is in the best interest of the medical patients of Wilkes County and others using the hospital to add the chiropractor to the staff," noting that state law permits, but does not require, hospitals to grant hospital privileges to chiropractors. (Joint Appendix filed with Fourth Circuit ("JA") 108) After due consideration (and a personal meeting with petitioner), the Medical Executive Committee affirmed the Credentials

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petitioner's application made their determination based on factors relating specifically to petitioner and might have decided differently regarding another chiropractor.

Committee's recommendation to deny petitioner's application. The Executive Committee was particularly concerned about petitioner's compliance with state law requirements that medical doctors co-admit all patients of non-physicians and remain responsible for their medical care.[3] Petitioner appealed this decision to the hospital's Board of Trustees before whom petitioner appeared personally.

After hearing petitioner and considering all other relevant material, including the medical staff committee recommendations required by the hospital by-laws, the Board denied petitioner's application. The Board stated its reasons for denying the application in a written resolution which explained that petitioner was the first chiropractor to apply for privileges at the hospital and that the Board had been unable to find any hospital in North Carolina that had a chiropractor on staff. "In view of the untried nature" of having

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[3] This legal requirement was of particular concern because, in his appearance before the Medical Executive Committee, petitioner would not agree to the co-admission requirement. It has been stipulated on petitioner's behalf that under his application for privileges, no medical doctor would see a patient admitted "for chiropractic care." (JA 1654-55) While petitioner apparently now indicates a willingness to agree to this requirement, at the time his application was being considered he would not agree.

a chiropractor on staff, the Board was concerned about (1) increased malpractice liability and/or insurance premiums; (2) the staff's inability to identify, develop and implement a program of peer review for chiropractic services, which was required by both North Carolina law and Federal Medicare law; and (3) the Board's inability to monitor chiropractic fees and handle patients complaints about them (as it did for physician fees). Examining the need for petitioner's services at the hospital, the Board found that there did not appear to be any significant demand for chiropractic services at the hospital, and after petitioner's presentation, that there did not appear to be any valid reason why the treatment he rendered patients could not be rendered outside the hospital as well as in the hospital. Thus, as the Resolution related, the Board's "considered opinion" was that the application should be denied. (JA 23-24)

Subsequently, petitioner brought this lawsuit, alleging a violation of the federal antitrust laws. Petitioner named as defendants the hospital, the individual hospital trustees, and the individual physicians who were members of the medical staff committees making recommendations to the Board. Petitioner's Complaint acknowledged that it was the hospital *Board* that denied his privileges and that the Board did so for the reasons stated in its Resolution, but alleged various conspiracies

involving the medical staff committees, their members and the American Medical Association (an unnamed co-conspirator) to deny his privileges. Prior to the district court's decision, petitioner abandoned a number of these conspiracy theories and dropped the hospital as a defendant.[4] The district court granted summary judgment for the remaining defendants finding the privilege denial and committee recommendations were authorized actions of, or directed by, a municipality and thus immune from antitrust scrutiny under the Local Governments Antitrust Act of 1984, 15 U.S.C. § 34 *et seq.*, and State Action doctrine, first recognized in *Parker v. Brown*, 317 U.S. 341 (1943). The court expressly rejected petitioner's argument that immunity did not attach to the recommendations of the medical staff committee members because they were *private* physicians engaged in a *private* conspiracy. The court noted that all that was necessary for

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[4] In his original and three amended complaints, petitioner has charged a conspiracy among the medical staff, between the medical staff and trustees (JA 19), between the medical staff and the AMA (JA 27) and between the hospital's Board of Trustees and the medical staff through its one overlapping member (JA 179-80). At this point, however, petitioner's *only* substantive claim is that the private M.D. physicians staff committee members combined or conspired to deny petitioner's privileges *through their recommendation* to the board.

immunity was a showing that the defendants acted in an official capacity or were directed by governmental officials, a showing clearly made in this case.[5] Motives, even personal gain motives, were irrelevant. In any event, the court noted that in this case there was no evidence of undue influence or improper persuasion by the physicians in their recommendations to the Board. (Pet. 17a)

Petitioner appealed this decision only as to the defendant medical staff committee members[6] and made plain that the only remaining theory is that the *recommendation* of these physicians was the product of a conspiracy. Petitioner argued that the defendants' recommendation to the Board was not covered by the State Action doctrine or LGAA because the Committee members were private individuals, not government officials.

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[5] The "governmental officials" are the municipal hospital (acting through its Board of Directors). To the extent that the actions of the medical staff committee members were acts of "private parties," they were clearly directed by the hospital and Board.

[6] While petitioner's Parties to the Proceeding points out that one of the physicians, Dr. Bond, also served on the Wilkes Hospital Board of Trustees, it should be noted that Dr. Bond is included in this matter *only* as a physician medical staff member, not as a member of the Board of Trustees.

The Fourth Circuit affirmed the district court's grant of summary judgment, finding that the LGAA and State Action antitrust immunity applied not only to the denial of privileges by the Board, but also extended to the recommendations of physician committees made at the behest of the Board and therefore as agents of the hospital. Petitioner seeks review of that decision claiming that it creates a conflict with the rulings of other circuits.

REASONS FOR DENYING THE WRIT

I. SUMMARY OF ARGUMENT

The Fourth Circuit's decision directly follows this Court's decisions in *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985) and *Columbia v. Omni Outdoor Advertising, Inc.*, ___ U.S. ___, 111 S. Ct. 1344 (1991), and is in harmony with other courts of appeals' decisions following those cases. The Fourth Circuit's decision affirming the lower court's grant of summary judgment is correct; and, in any event, does not fall within the narrow range of cases appropriate for consideration by this Court. Petitioner erroneously asserts that two aspects of the Fourth Circuit's decision create a "conflict in the circuits". The first is but an argument that the Fourth Circuit improperly and incorrectly interpreted North Carolina law, a subject clearly not appropriate for this Court's review on a writ of certiorari. In the second,

petitioner seeks to attack a "straw man" conspiracy holding not rendered by the court at all (and not necessary to its decision). Finally, even if there were a conflict in the circuits, this case is of limited importance.

II. THE DECISION BELOW DOES NOT CREATE A CONFLICT IN THE CIRCUITS

A. The Court's Holding that Respondents' Conduct Was Exempt from the Antitrust Laws under the State Action Doctrine Was Proper and Does Not Conflict with the Decisions of Other Circuits

Petitioner attempts to fashion a "conflict in the circuits" from the Fourth Circuit's holding that North Carolina state law provides the requisite basis for State Action immunity for municipal hospital privilege decisions concerning *chiropractors*, as well as those relating to *physicians*. Petitioner asserts that the Fourth Circuit's decision is in conflict with other circuits because it extends the State Action doctrine to immunize activities "expressly prohibited by state statute." (Pet. 14) It is plain that what petitioner is really complaining about is not a split in the circuits, but the Fourth Circuit's failure to embrace petitioner's argument about the proper interpretation of North Carolina law.

Petitioner argues that, while North Carolina law provides "clear articulation" of regulation and contemplates anticompetitive effects as to denials of hospital privilege applications for *physicians, dentists and podiatrists*, as to *chiropractors*, there is no North Carolina law providing "clear articulation." (Pet. 15) Petitioner argues that while North Carolina state policy is that hospitals must exercise care to admit only competent *physicians* who apply for hospital privileges, if a *chiropractor* applies, he or she must be admitted to the staff.[7] Thus, petitioner argues, there can be no State Action immunity for denial of a chiropractor's privileges, an act illegal under state law, and it creates a conflict with other circuits for the court to so find. But the Fourth Circuit did not find that state law prohibited denial of

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[7] Petitioner asserts that "[T]he legislature . . . clothed public hospitals with broad discretion to grant or deny privileges to M.D.s, dentists, and podiatrists, but limited that authority through . . . N.C. Gen. Stat. §§ 90-153 & 90-157.1, expressly mandating access to public hospitals by chiropractors and their patients." (Pet. 15) Petitioner purports to argue that not *all* chiropractors must be admitted (Pet. 10) and that apparently *some* competency screening would be permitted, though, according to petitioner, none is specified in North Carolina law. However, if, as petitioner argues, at least one chiropractor *must* be admitted to each hospital, then, if only one applies, like petitioner at Wilkes Hospital in 1984, the hospital would be required to admit him to staff regardless of competence.

chiropractor hospital privileges, and it is the court's failure to so interpret North Carolina state law about which petitioner complains.

In accordance with its previous ruling in *Coastal Neuro-Psychiatric Associates v. Onslow Memorial Hosp.*, 795 F.2d 340, 341-42 (4th Cir. 1986), the Fourth Circuit ruled that North Carolina statutes authorize municipalities to construct, operate and maintain hospitals and require the hospital's governing body, its board of trustees, to decide who can practice there (taking into account specified criteria including the individual's competence and training and the needs and capabilities of the hospital). These statutes contemplate diminution of competition when privilege applications are denied by municipal hospital boards and provide State Action immunity for municipalities and their instrumentalities, as set forth by this Court in *Town of Hallie*, 471 U.S. at 40-42. This policy is long standing in the Fourth Circuit and is not challenged by petitioner. Rather, petitioner seeks to distinguish the instant case from *Coastal* and other municipal hospital cases because this case involves a chiropractor. According to petitioner, because the North Carolina statute setting forth the criteria on which hospital boards are to base their privilege decisions refers specifically to *physicians*, *dentists*, and *podiatrists*, and does not

mention *chiropractors*, the State did not "clearly articulate" such a regulatory scheme for chiropractors. This absence of specific reference to chiropractors, along with two other North Carolina "chiropractic" statutes, petitioner argues, make it *illegal* for a North Carolina hospital to deny hospital privileges to a chiropractor.

The Fourth Circuit rejected petitioner's argument that North Carolina law prohibited denial of hospital privileges to chiropractors when it ruled that State Action applied in this case. The Fourth Circuit's interpretation of North Carolina law is not an appropriate subject for this Court's consideration on writ of certiorari and use of its limited resources. As this Court has made plain, "[t]he federal judges who deal regularly with questions of state law in their respective districts and circuits are in a better position than we to determine how local courts would dispose of comparable issues." *Butner v. United States,* 440 U.S. 48, 51 (1979) (footnote omitted).

Moreover, the Fourth Circuit's rejection of petitioner's proposed interpretation of North Carolina law was correct, and, in fact, the *only reasonable* interpretation of state law. Neither the absence of a specific reference to chiropractors in N.C. Gen. Stat. § 131E-85(a) nor anything in the two "chiropractic" statutes cited by petitioner

reflects a state policy requiring hospitals to grant hospital privileges to chiropractors.

While the statute does not specifically refer to chiropractors, the statute does refer to "others" and specifically states that"[n]othing in this [provision] should be deemed to mandate hospitals to grant or deny to any such individuals [physicians, dentists or podiatrists] *or others* privileges to practice in hospitals, or to offer or provide any type of care." N.C. Gen. Stat. § 131E-85(a) (emphasis added).[8] Far from reflecting a policy granting chiropractors greater rights than physicians to hospital privileges in North Carolina hospitals, the statute expresses a clear policy that hospital *boards of trustees* are to make hospital privilege decisions and that those decisions are required to be based on the qualifications of the applicant and the needs of the hospital. (Those criteria were duly applied with respect to petitioner's application.)

Moreover, neither "chiropractic" statute cited by petitioner prohibits a hospital from denying hospital privileges to a chiropractor. N.C. Gen. Stat. § 90-153 states that licensed chiropractors in North Carolina may have access to and practice chiropractic in public hospitals. Petitioner's

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[8] This portion of the statute was omitted when petitioner quoted the provision in his petition. (Pet. 7-8)

suggestion that this statute *requires* hospitals to admit chiropractors to their staffs is directly contradicted by use of the permissive "may" in the statute.[9]

Similarly, the other statute cited by petitioner, N.C. Gen. Stat. § 90-157.1, which guarantees that patients who are recipients or beneficiaries of public programs are free to select chiropractors for appropriate services, does not require that hospitals admit chiropractors to their medical staffs. Nothing in the statute would so suggest, and the North Carolina Court of Appeals has specifically ruled that such freedom of choice statutes do not require hospitals to admit any practitioners or categories of practitioners to their medical staffs.

In *Cameron v. New Hanover Memorial Hospital, Inc.*, 58 N.C. App. 414, 452-53, 293 S.E.2d 901, 924, *cert. denied*, 307 N.C. 127, 297 S.E.2d 399 (1982), the North Carolina Court of Appeals specifically rejected the argument put forth by podiatrists that an essentially identical freedom of choice statute for podiatrists required

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[9] The intentional use of the permissive "may" is emphasized by the legislature's use of the mandatory "shall" in the next clause of this statutory provision, which relates to chiropractors' access to x-ray and laboratory records concerning their patients. N.C. Gen. Stat. § 90-153.

a public hospital to grant hospital privileges to podiatrists. As the court pointed out, under North Carolina law, the right to enjoy hospital staff privileges is not absolute; it is subject to the standards set by the hospital's governing body, whose duty it is to establish such standards.[10] Freedom of choice statutes (which are typically applied to prohibit state reimbursement programs from refusing to reimburse certain types of practitioners for appropriate services) do not alter that fact. *Id.*

Neither statute, nor any other state policy, requires that hospitals admit chiropractors to medical staffs, much less that they give a *higher* priority to chiropractors than to physicians. Regardless of which North Carolina statute is looked to for the state's policy with respect to hospital privileges, the policy is inescapable that North Carolina empowers municipal hospital boards of trustees to make hospital privilege

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[10] Not only does North Carolina law make plain that it is the duty of the hospital board of trustees to decide hospital privilege matters, but also the courts of North Carolina have emphasized that "no court should substitute its judgment for that of the hospital board" in making hospital privilege decisions. *Claycomb v. HCA-Raleigh Community Hosp.*, 76 N.C. App. 382, 384, 333 S.E.2d 333, 335 (1985), *rev. denied*, 315 N.C. 586, 341 S.E.2d 23 (1986); *Cameron*, 307 N.C. App. at 449, 293 S.E.2d at 922.

decisions and requires them to do so carefully, examining the capabilities of the applicants and the needs and requirements of the facility. This clearly articulated policy is in no way contradicted or diminished by the chiropractic statutes referenced by petitioner.

In essence, petitioner has sought to disguise a question of interpretation of state law as a conflict in the circuits. No such conflict exists, and the Fourth Circuit's decision is correct.

B. The Fourth Circuit's Conclusion that State Action Immunity for Municipal Hospital Privilege Decisions Extends to Recommendations Made by Medical Staff Committees that Are Delegated Responsibility for Making Such Recommendations Is Correct and Is Not in Conflict with Other Circuits

Petitioner argues that the Fourth Circuit's decision "radically extended" the intracorporate conspiracy doctrine by ruling that the committee recommendations of respondent physicians were made as agents of the municipal hospital and thus indistinguishable from the hospital for immunity purposes. (Pet. 18) Petitioner argues that this holding is a ruling that private independent physicians on a medical staff are incapable of conspiracy among themselves. The Fourth Circuit did not so find. Rather, its ruling was that the medical staff committee recommendations were authorized (and required) by the municipal hospital and therefore were acts of agents of the hospital, covered by immunity for acts of the municipality. To the extent that the Fourth Circuit's ruling interpreted conspiracy law at all,[11]

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[11] The court did correctly note that "defendants' actions are shielded by operation of the Local Government Antitrust Act (LGAA), the State Action Doctrine *and intracorporate immunity*." (Pet. 4a, emphasis added) It is presumably this

it did not rule on the capacity for conspiracy among staff members (but rather conspiracy between the medical staff (or its committees) and the hospital) and such a determination was not necessary to the Court's finding of State Action immunity.

The Fourth Circuit explained that when considering whether actions of private individuals are immune under both LGAA and State Action immunity, the test is whether the actions are authorized or directed by a municipal official. (Pet. 7a-10a) The court then referenced its recent holding in *Oksanen v. Page Memorial Hospital*, 945 F.2d 696 (4th Cir. 1991), *cert. denied*, ___ U.S. ___, 112 S. Ct. 973 (1992), in which it determined that "when members of the medical staff recommend action in an application for privileges, as authorized by the municipal hospital, they are acting in their capacity as employees, as opposed to private parties." (Pet. 8a) The court went on to rule that "[p]hysicians who make peer review decisions at the behest of, or by delegation from, the hospital's board of trustees, are acting as agents of the hospital and are, therefore, indistinguishable from it." *Id.* Thus, State Action immunity covered the actions of the respondents

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language which prompted petitioner's argument.

who had acted as authorized by staff bylaws and as agents of the municipal hospital.

The court explained that petitioner's argument that the medical staff's recommendation exerted "undue influence" on the Board of Trustees was not cognizable because the hospital was indistinguishable from its agents and cannot exert "undue influence on itself." (Pet. 10a) To the extent that this ruling relates to conspiracy law, it merely restates the *Oksanen* holding that there can be no conspiracy in a peer review setting between the hospital and those required to make recommendations to it.

But petitioner purports not to disagree with the Court's ruling insofar as it holds that the staff physicians are incapable of conspiring with the hospital. (Pet. 20, n.11) Instead, he identifies the issue as whether the committee members are capable of conspiring among themselves, an issue not necessary or relevant to the immunity ruling of the court. In *Columbia v. Omni Outdoor Advertising, Inc.*, ___ U.S. ___, 111 S. Ct. 1344, 1351 (1991), this Court made clear that there was no "conspiracy" exception to the State Action immunity for municipalities. Thus, authorized actions of a city council were immunized from antitrust scrutiny even if the individuals on the city council took action for their own selfish or corrupt motives at the request of private parties

seeking to further their own private interests. *Id.*[12] Under *Omni*, State Action would immunize a board of trustee decision and the recommendations of physicians even if those recommendations and decisions were made pursuant to a plan among the physicians to further their own interests (which is directly contrary to the evidence in this case), so long as the decisions were authorized actions of the board and those recommending.[13]

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[12] In addition, this Court recognized that State Action immunity applied not only to the municipality itself (the city council), but also to those private parties who made recommendations regarding its decisions. *Id.*

[13] Petitioner's proposed "parade of horribles" is not to the contrary. (Pet. 23-24) Indeed, if a state statute appointed a municipal body to determine which stores could locate at a new shopping mall and required a "tenant's admission association" to make recommendations to the body, the actions of the municipal body and the tenant's association would appropriately be immunized from antitrust scrutiny under the State Action Doctrine. Similarly, State Action immunity would apply to the activities of a "landing rights committee" required by to make recommendations to a statutorily established municipal authority determining which airlines could land at an airport.

III. THIS CASE LACKS WIDESPREAD IMPORTANCE

Finally, petitioner argues that this Court should issue a writ of certiorari because the case involves "exclusion of chiropractors from hospital access." (Pet. 24) As noted *infra*, note 2, this case does not involve exclusion of a class of competitors, but rather one individual chiropractor. Thus, the case lacks the widespread importance claimed by petitioner.

CONCLUSION

For the reasons explained, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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